

REMARKS

In the Office Action dated September 28, 2006, the Examiner objected to claims 23, 24, 42, and 63 based on informalities; provisionally rejected claims 1-5, 20, 21, 23-26, 39, and 63 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over copending Application Nos. 10/771,536 and 10/771,415; rejected claims 1-5, 12-23, 25-27, 39-40, 42-43, and 63 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,482,440 to Dennehey et al. ("Dennehey"); and rejected claims 6-11 and 24 under 35 U.S.C. § 103(a) as being unpatentable over Dennehey.

By this Reply, Applicants have canceled claims 1-27, 39-43, and 63 and have added claims 147-203. Claims 28-38, 44-62, and 64-203 are currently pending in this application.

New claim 147 incorporates, among other things, subject matter similar to that of originally-filed claims 1, 6, 8, and 9. New claim 147 recites, among other things, "the support element further comprising at least one pair of tube engagement connectors, each of said at least one pair of tube engagement connectors being placed on opposite ends of each of said first, second, and third curved portions." Support for this limitation of new claim 147 can be found, for example, at page 19, line 10 – page 20, line 5.

The Examiner objected to claims 23, 24, 42, and 63 based on informalities. Applicants respectfully submit that these claim objections have been rendered moot as a result of Applicants cancellation of claims 23, 24, 42, and 63. Accordingly, Applicants ask that the Examiner withdraw these claim objections.

Applicants respectfully traverse the Examiner's rejection of claims 1-5, 20, 21, 23-26, 39, and 63 on the ground of nonstatutory obviousness-type double patenting as

being unpatentable over various claims of the copending '536 and '415 Applications, and note that, at a minimum, the double patenting rejection is premature because the '536 and '415 Applications have not yet issued as patents. Applicants further submit that the provisional nonstatutory obviousness-type double patenting rejection has been rendered moot by Applicants cancellation of claims 1-5, 20, 21, 23-26, 39, and 63. To the extent this rejection relates to new claims 147-203, however, and in order to expedite prosecution of this application, Applicants submit herewith a Terminal Disclaimer to obviate the provisional double patenting rejections based on the '536 and '415 Applications. The filing of the Terminal Disclaimer in no way manifests an admission by Applicant as to the propriety of the double patenting rejections. See M.P.E.P. § 804.02 citing Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). Applicant reserves the right to traverse the provisional double patenting rejections at a later date. Applicant respectfully requests the withdrawal of the double-patenting rejection in view of the Terminal Disclaimer attached hereto.

Applicants respectfully traverse the Examiner's rejection of claims 1-5, 12-23, 25-27, 39-40, 42-43, and 63 under 35 U.S.C. § 102(b) as being anticipated by Dennehey. Applicants submit that the Examiner's § 102(b) rejection is now moot, based on Applicants' cancellation of claims 1-5, 12-23, 25-27, 39-40, 42-43, and 63. To the extent the Examiner's rejection applies to new claim 147, however, Applicants submit that Dennehey fails to teach each and every limitation of new claim 147. The Examiner contends that Dennehey "discloses a support element or tray 26 for a blood treatment module or fluid circuit 18 comprising a basically plane or flat panel or wall 140 with

rectilinear and continuous peripheral walls or side panels . . . brackets 158 or engagement connectors that are continuous with, thereby fastened to, on rectilinear side wall 138 . . . [the] brackets 158 or engagement connectors [being] near the curved portions of the side walls . . . (see FIG 10).” (Office Action at 4, 6, 8.) Dennehey does not disclose “the support element further comprising at least one pair of tube engagement connectors, each of said at least one pair of tube engagement connectors being placed on opposite ends of each of said first, second, and third curved portions” (emphasis added), as recited in new claim 147. To the contrary, as the Examiner cites, the brackets 158 in Dennehey are merely “near” a curved portion. Moreover, Dennehey does not disclose a brackets 158 configured as pairs wherein each pair of brackets 158 is placed on opposite ends of any curved portion. The arrangement of tube engagement connectors, as recited in new claim 147, enable the support element of this invention to utilize a novel and optimal arrangement of pump tubes in a very compact integrated module.

Thus, new claim 147 is not anticipated by Dennehey and is allowable. Accordingly, new claims 148-203 are allowable at least due to their dependence from allowable new claim 147.

Applicants respectfully traverse the Examiner’s rejection of claims 6-11 and 24 under 35 U.S.C. § 103(a) as being unpatentable over Dennehey. Applicants submit that the § 103(a) rejection is moot as a result of Applicants’ cancellation of claims 6-11 and 24. To the extent the Examiner’s rejection applies to new claim 147, however, Applicants submit that Dennehey fails to teach or suggest each and every element of new claim 147. As discussed above, Dennehey fails to teach or suggest “the support

element further comprising at least one pair of tube engagement connectors, each of said at least one pair of tube engagement connectors being placed on opposite ends of each of said first, second, and third curved portions," as recited in new claim 147.

Moreover, Dennehey does not teach or suggest the importance of strategic placement of tube engagement connectors to obtain an optimal arrangement of pump tubes for use in a compact integrated module, as appreciated by this invention and recited in new claim 147.

Thus, new claim 147 is non-obvious over Dennehey and is allowable. Accordingly, new claims 148-203 are allowable at least due to their dependence from allowable new claim 147.


In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: December 22, 2006

By: 
Aaron L. Parker
Reg. No. 50,785

Attachments: a Terminal Disclaimer